

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





77-1018

In The  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

No. 77-1018

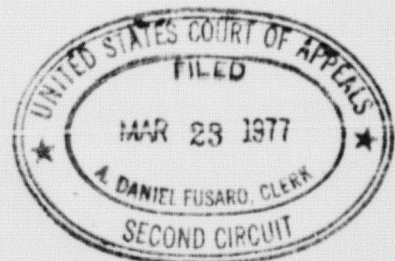
THE UNITED STATES OF AMERICA,  
Appellee,

VS

MICHAEL PATRICK BARRETT,  
FERDINAND SANTANA,  
Defendants-Appellants.

APPENDIX FOR DEFENDANT-APPELLANT BARRETT

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P.B.M. - Deft. advised the court that he is



DATE	IV. PROCEEDINGS (see page 1)	PAGE TWO	V. SCHEDULED DELAY
7/23/76		Adj. to 6/20/76 for arraignment.	
7-29-76		Proceedings before the Magistrate - Deft. Barrett was arraigned. Mr. Brownstein entered a not guilty plea for the deft. Court set the following scheduled for discovery and adj. the scheduled previously set for Santana. Motions are to be filed by 7-12-76; Govt. to respond by 7-18-76; argument scheduled 7-20-76.	
7/7/76	7	Filed deft's notice of motion for discovery and inspection, ret. 7-13-76.	
7/14/76	8	Filed Govt's response to certain pre-trial motions made by the deft. Joseph Charles Ferraro.	
7/13/76		Proceedings before the Magistrate - No appearance for defts. No motions have been filed. Court will contact Mr. Brownstein re filing motions.	
7/14/76		Proceedings before the Magistrate - Proceedings adj. to 7-18-76. Defts are to appear with counsel for determination as to counsel and for completion of discovery.	
7/19/76	9	Filed Govt's notice of motion to move action ready for trial.	
7/15/76		P. B.M. - Court directed that both Atty. Brownstein and Atty. Salton Rosenberg meet with Govt., and both are to appear for argument of motions on 7/18/76 and for determination as to representation of the defendants.	
7/16/76		P.B.M. - Both Attorneys have met with the Govt. and are satisfied with discovery. They do not anticipate filing any dis- covery motions. Discovery deemed complete and case will be returned to Clerk. Defts. Remanded to custody of the Marshal.	
8/12/76		Pre-trial conference held. Trial Sept. 14, 1976	
8/19/76		Filed Order to show cause, why an order should not be entered permitting the FBI to obtain a sample of deft's hair, etc. ret. 8/23/76, 9:00 A.M.-- Curtin, J.,	
8/20/76		Filed Govt's affidavit of service on Order to show cause.	

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
8/23/76	Filed Order that deft. supply forthwith to an agent of the FBI samples of hair in a quantity deemed necessary by the agent of the FBI--Curtin, J.				
8/25/76	Filed Five subpoenas - Alberta Love, Jack Stark, Natalie Rossini, Mary Iacobelli, Pierre J. Carneu, served 8/20/76				
8/27/76	Filed two subpoenas - Det. Donald P. Peacock, and Steve Evans, served 8/26/76				
9/1/76	Filed one subpoena - Eugene K. Muchow - served 8-31-76.				
8/23/76	Return of order to show cause why Govt. should not be estopped from obtaining hair specimens. Motion denied. Court directs defendant to supply to Govt. sample of hair.				
9/8/76	Filed seven subpoenas - Patrolman George Nowald, Patrolman Thomas Armitage, served 8/30/76; Joseph Candee, Kevin Schopf, Det. Thomas J. Loveric, served 9/1/76 and Linda Cloutier, ret. no-service				
9/13/76	Filed four subpoenas - Sue Grabowski, Cathy Baron, Giselle Buckman, Thomas Bumbalo, served 9/10/76				
9/13/76	Filed Seven subpoenas - Patrolman William Bowen, Thomas Dzielski, Nick Caselinoovo, Louis Vaccaro, Det. Francis Mulvey, Pam Worley, Det. Joseph DeBergalis - served 9/9/76				
9/14/76	Filed Three subpoenas - Martin Doebler, Carleton, Gilmour, Ruth Isaacs, served 9/10/76				
9/14/76	Govt moves case ready for trial, whereupon the jury is duly empanelled. Trial is adj. to a time to be determined by the Court. (no witnesses sworn)				
9/16/76	Filed subpoena - Linda L. Sheehy, served 9/13/76				
9/20/76	Filed six subpoenas - Sharon Cananaro, Maurice Catter, Judy Cuenot, Tom Couch, served 9/18/76; Mrs. John J. Corman, Mrs. Ethel Fortman, served 9/18/76				
Sept. 23	Filed three subpoenas - Angelo Cananaro, William Overfield, served 9/21/76 and Helen Chu, returned no-service				
9/28/76	Filed subpoena - William Staehle, served 9/27/76				



ED STATES DISTRICT COURT  
INAL DOCKET

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
(Document No.)		(a)	(b)	(c)	(d)
9/1/76	Filed two subpoenas - Gerald F. Kopacz, & Janet Schmidt, served 9/27/76				
9/30/76	Trial continues from 9/14/76 with the same appearances & jury. Motion by Co-Def't. Ferraro for suppression. Motion denied. Def't. Ferraro moves for a severance. Motion denied. Govt., opens - Witnesses are called. Trial is adj. until tomorrow.				
10/1/76	Trial continues from yesterday with the same appearances and jury. Trial is adj. until			10/5/76	
10/5/76	Trial continues from 10/1/76 with the same appearances and jury. On motion of the def't., the Court declares a mistrial and the Jury is discharged.				
10/7/76	Filed subpoena Corrine Johnson, served 10/5/76				
10/7/76	Filed Decision and Order - Def't. Ferraro's motion to suppress evidence seized at 823 Richmond is denied as far as those items in the "plain view" or "incident to arrest" are concerned. If the parties cannot agree upon what items fit into these categories, they shall report to the court before trial so that argument on particular items may be heard --CURTIN, J.				
10/8/76	Filed subpoena Eugene K. Muchow, served 9/28/76				
10/12/76	Filed subpoena - George Nowadly, served 10/4/76				
10/12/76	Govt. moves case ready for trial before Judge Curtin, at Buffalo, whereupon the Jury is duly empanelled: Trial is adj. until 10/13/76				
10/13/76	the testimony Filed Ct. Steno's transcript of certain Witnesses commencing on 9/30/76				
10/14/76	Filed two subpoenas - William Stachle, Pasquale Sardinia, served 10/12/76				
10/15/76	Trial continues from 10/13/76 with same appearances & jury. Witnesses testify. Mr. Carlisi moves for a mistrial because of a disturbance during noon recess which occurred in the hall outside the court room. After interviewing each juror privately, the court denies the motion. Trial is adj. until 10/13/76				
10/13/76	Filed three subpoenas - Todd Manning, Martin Doeblor, William Overfield, served 10/14/76				



UNITED STATES DISTRICT COURT  
CRIMINAL DOCKET U. S. vs. BARRETT, Michael Patrick

76 95 1  
Yr. | Docket No. | Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(b)	(c)	(d)	(e)
	(Document No.)				
10/18/76	Trial continued from 10/15/76 with same appearances & jury. Deft. moves for a mistrial because of certain publicity about the trial over the week end. Motion denied.				
10/20/76	Trial continues from 10/18/76 with same appearances & jury. Trial is adj. until tomorrow.				
10/21/76	Trial continues from yesterday with the same appearances & jury. Trial is adj. until tomorrow.				
10/22/76	Counsel, defendant and jury present for trial. Trial is adj. until 10/26/76 at 2:00 P.M. because of the illness of AUSA Roger Williams, the prosecutor, who is present in court.				
10/26/76	Trial continues from 10/21/76 with same appearances & jury. Trial is adj. until tomorrow.				
10/27/76	Trial continues from yesterday with the same appearances and Jury. Deft. Santana makes no motions. Defts. Barrett and Santana move to dismiss the indictment. Motions denied. Deft. Ferraro moves to suppress certain evidence and for a severance and also for a mistrial. Motions denied. Deft. Barrett defers to deft. Ferraro to present his case. Trial is adj. until 10/29/76.				
10/27/76	Filed 20 subpoenas - Judy Guenot, Natalie Rossini, Alberta J. Love Pierre J. Carneau, not served - witnesses appeared on 10/15/76; Carleton E. Gilmour, Mary Iacobelli, Joseph John Candee, not served. Witnesses appeared 10/18/76; Francis J. Mulvey, Mrs. John J. Corman, Jack R. Stark, Jr., Paul R. Delano, Stephen J. Evans, Norbert Kupinski, Dominic R. Race, William Bower, not served Witnesses appeared on 10/20/76; Ruth Isaacs, Dennis Leuchner, Angelo Canazaro, Thomas M. Dzielski, not served. Witnesses appeared on 10/21/76; Cisele Buckman, served 10/22/76, and one subpoena (D.C.) E.J. Meyer Memorial Hospital, served 10/22/76				
10/29/76	Filed Transcript of the Direct Examination of Witness Joseph Ferraro, taken on 10/27/76				

ED STATES DISTRICT COURT  
INAL DOCKET

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
29/76	Filed Five subpoenas - Kathleen Baron, Jacqueline Kontac, Doris Ganger, Linda Sheehy, Doris Ganger, served 10/21/76				
10/29/76	Trial continues from 10/27/76 with same appearances & jury. All defts. move for a mistrial because of article in Courier. Motions denied. Trial adj. 11/1/76.				
11/1/76	Filed subpoena Joseph Mose, served 10/28/76				
11/1/76	Trial continues from 10/29/76 with same jury and appearances. Attys. sum up. Court adjs. trial until tomorrow.				
11/2/76	Trial resumes from yesterday with same appearances & jury. The jury retires to deliberate upon their verdict. After listening to instructions, jury is sent home for the night to return tomorrow morning to continue their deliberation.				
11/3/76	Jury continues deliberation from yesterday. Jury returns with the following partial verdict. Deft. Barrett - Count One - No Verdict; Count Two - Guilty; Count Three - No Verdict. Defendant remanded to the custody of the Marshal. Court does not set a sentence date.				
11/3/76	Filed Jury verdict.				
11/15/76	Filed deft's notice of motion for an Order setting aside each of the verdicts returned on the 3rd day of November 1976., ret. 12/2/76				
11/17/76	Cross examination of Filed transcript of/Witness Joseph Ferraro taken on 10/29/76				
11/10/76	Motion by deft. to set aside the jury verdict and for judgment of acquittal. Court grants the defts. 11/15/76 to file written motions.				
11/26/76	Filed Government's memorandum in Opposition to certain motions made by the defendant				
11/27/76	Oral argument on motions Adj. to 12/3/76				
11/26/76	Motions scheduled but not heard. Adj. 12/3/76				
11/28/76	Return of motions. Adj. 12/9/76				



DATE	PROCEEDINGS	CLERK'S FILE	
		PLAINTIFF	DEFENDANT
1976			
Dec. 9	Court rules that motions by Barrett and Santana to dismiss the Indictment were timely made. Motions to dismiss are denied. All defts. motions to set aside verdict are denied.		
Dec. 13	For sentence. Deft. is sentenced as follows: On Count Two of the Indictment, deft. is sentenced to the custody of the Atty. General for a period of Ten (10) Years. CURTIN, J.		
Dec. 16	Filed Judgment and Commitment. Commitment issued.		
Dec. 27	Filed deft's notice of appeal.		
1977			
Jan. 6	Copy of notice of appeal, financial affidavit, form A and copy of docket entries, mailed to CCA.		
Jan. 19	Filed Ct. Steno's transcript <sup>Charge of the Court</sup> <del>1/11/77</del> held before Hon. John T. Curtin, 11/2/76		
Jan. 25	Filed certified cy. of J & C with Marshall's return of service to the U.S.P. at Leavenworth on 1/15/77		
Feb. 11	Filed transcript of proceedings of trial on 10/12/76, 10/15/76, 10/18/76, 10/20/76, 10/21/76, 10/22/76, 10/26/76, 10/27/76, 10/29/76, 11/1/76, 11/2/76, 11/3/76. Also transcript of sentence		
Feb. 11	Filed transcript of proceedings of In-Chambers conference during trial on 10/27/76 - Ordered sealed by the Court.		
	Cy. 2		
Feb. 11	Filed/CN-21 - Voucher for transcript in the amt. of \$2,257.50; Orig. to the Adm. office for payment		
Feb. 14	original pertinent papers, clerk's certificate, index of papers and index of exhibits and copy of docket entries mailed to CCA.		

1 A Just saw the back of the person's head. The person  
2 had sandy blonde hair; that's all I could see from  
3 that distance there, just the back.

4 Q I take it then there came a time that vehicle left  
5 your sight?

6 A Yes.

7 Q What did you do then?

8 A Well, what I immediately did was run in the bank. I  
9 wrote down on a piece of paper the license plate  
10 number and a description of the car I had seen.

11 Q Do you remember the license plate number?

12 A I think it was EC-881. I am not sure.

13 Q I show you what is marked as Government Exhibit 47.

14 Do you recognize that, Mr. Stark?

15 A Yes, that is a piece of my desk note paper.

16 Q Do you recognize any of the writing on that?

17 A Yes. That is all my writing.

18 Q Okay. Do you see that license number that you just  
19 mentioned on that piece of paper?

20 A Yes, I do.

21 Q And that is in the middle of the page, approximately  
22 the middle of that notebook paper?

23 A Yes.

24 Q What do you have written below there?

25 A Blue Cadillac.





FBI photos

Surveillance camera photos of several suburban Buffalo bank holdups indicate similar methods

... authorities working on theory same gang is involved

# FBI Links Rash of Bank Holdups To Pro Gang; Take Put at \$150,000

By JOHN PAULY

A loosely-knit gang of "pros" has been responsible for a rash of recent suburban bank robberies, the FBI disclosed Thursday.

"Their total take is now about \$150,000 counting Tuesday's job in Amherst," Special Agent Dennis M. Gibbs said.

"They (the bandits) are armed and they mean business," Gibbs said. He noted that a trio of robbers shot up a West Seneca branch during a \$40,000 holdup and then fired two bullets at a pursuing civilian.

Gibbs, head of the local FBI's bank robbery squad, said there have been "similarities" in nine unsolved suburban holdups this year.

"They take over the banks. They vault the counter instead of asking the tellers for money," Gibbs said, starting to tick off the pattern.

"They pick banks near Thruway or expressway entrances; they switch cars a short distance from the bank; they use plastic garbage bags; and there is always the long barreled hand gun," the special agent explained.

Another trademark is the wearing of ski masks.

Gibbs said the investigations by the FBI and local police indicate that the banks are "cased" or watched before they are struck.

"In Tuesday's robbery (at the Bank of New York Office at 1864 Kensington Ave.) they entered through a side door instead of the front which they wouldn't have done if they hadn't looked it over beforehand," he said.

Two bandits armed with a sawed-off shotgun and a long barreled handgun escaped with \$11,000 in Tuesday's holdup.

"There are about eight members of the loosely knit gang and they have worked with a maximum of four guys on some jobs," Gibbs explained.

The FBI bank robbery squad chief explained that three men shot out two glass doors leading to a vault in the West Seneca Branch of the Erie County Savings Bank holdup April 23, before escaping in an auto driven by a fourth man.

The quartet also fired two shots at a motorist who followed them before he broke

off the chase and they switched to a second getaway auto, authorities said.

The gang also worked in a quartet during the \$5,000 March 13 holdup at the Marine Midland Bank-Western office at 4237 Union Rd., Cheektowaga.

"They started working the suburban banks here in December of last year," Gibbs said.

"The shift in bank robbery is to the suburbs from the city," he explained.

"All you have to do is walk into some city banks and see the armed guards and high windows protecting the tellers to know the reason," Gibbs noted.

"The suburban banks were easier, but they are becoming tougher now with the installation of armed guards, better alarms, and better cameras," he said.

The special agent also noted that bandits are further deterred from city holdups because of the high number of arrests made there by men and officers working under Lt. Raymond C. Fries of the police Robbery Squad.

FBI agents and police have made arrests in three of the

four bank robberies in the city so far this year.

Last year there was a record 43 bank holdups in Buffalo compared to 13 in 1976. Last year there was a total of 10 suburban holdups compared with nine so far in 1978.

"The courts also are cooperating," Gibbs said in noting that Federal Judge John T. Elin recently imposed prison terms of 14 and 15 years on two men involved in a recent city bank holdup.

U.S. Atty. Richard J. Arcara explained that his office considers bank robbery cases "top priority prosecutions."

"We have nearly a 100 per cent conviction rate in bank holdups," Arcara said.

Are the authorities getting close to cracking the suburban gang? Gibbs was asked.

"We have some suspects, but frankly we could use a break," he said.

Gibbs said citizens can help the FBI and police by being alert and noting anything suspicious, but urged civilians to take no action themselves if they suspect a robbery.

"We don't want any innocent bystanders killed," he concluded.



1 PROCEEDINGS: October 29, 1976, 9:40 a.m.

2 APPEARANCES: As before noted.

3 (Defendant Ferraro present.

4 Defendants Barrett and Santana not  
5 present.)

6 (Jury not present.

7  
8 THE COURT:

9 We are assembled in United States  
10 against Barrett, et al, and the defen-  
11 dants are not here yet. I believe you  
12 have a motion someone, - Mr. Rodenberg.

13 MR. BROWNSHAIN: We all do.

14 MR. RODENBERG: Yes, I do, your Honor. At this  
15 point for the defendant, Santana, I  
16 would move for a mistrial realizing full  
17 well, your Honor, the time we have spent  
18 and there has been a prior mistrial.  
19 Your Honor, I predicate that on the  
20 prosecutorial misconduct of the United  
21 States Attorney's Office and the FBI,  
22 specifically excluding Mr. Williams.  
23 The article which appears on Page 15  
24 of the Courier Express of this morning  
25 which I know your Honor can read or has  
read, includes this, which I wish to

1 point out at this time, "U.S. Attorney  
2 Richard J. Arcara explained that his  
3 office considers bank robbery cases top  
4 priority prosecutions". The paragraph,  
5 sir, immediately before that even drags  
6 the courts in it. Now, the FBI agent,  
7 Mr. Gibbs says, "The courts also are  
8 cooperating" and goes on about fourteen  
9 and fifteen year sentences imposed.  
10 That doesn't concern me about the fourteen  
11 and fifteen year sentences but this  
12 business about "The courts also are  
13 cooperating", in the very paragraph  
14 preceding what Arcara said, which Arcara  
15 had no right to say anything at this  
16 point, sir. Arcara, - Mr. Arcara must  
17 know that a bank robbery trial is in  
18 progress here. I am sure the Federal  
19 Bureau knows because of the problems  
20 we had with one of its agents on Wednes-  
21 day. Now, sir, the factual recitation  
22 clothed in supposed "MO's" covers us  
23 or covers the prosecutorial position  
24 exactly, sir. They take, - first he  
25 talks about nine unsolved suburban



1 holdups and this year and then he talks  
2 about taking over the banks, vaulting  
3 the counters instead of asking the  
4 tellers for money. I find it hard to  
5 believe. I am not going to read the  
6 rest of it.

7 MR. BROWNSTEIN:

I will read it.

8 MR. RODENBERG:

9 I find it hard to believe, your  
10 Honor, that that was not put in specifi-  
11 cally for this case and in the hope that  
12 the jurors would not only see it, it is  
13 difficult to miss, even if they comply  
14 with your admonition not to listen, not  
15 to read, not to do anything. It is  
16 deliberately put, sir, on this action  
17 column page. It has got this right to  
18 no business here. It is a page which  
19 is probably - -

20 (Defendants Barrett and Santana  
21 return to the courtroom.)

22 THE COURT:

So we have it - -

23 MR. RODENBERG:

Yes, sir.

24 THE COURT:

25 Let us tear that page out and make



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it a court exhibit and we will make it part of the record.

MR. RODENBERG:

I understand that, sir.

THE COURT:

Let us do that. Just hand the page up and we will have it here. I have read the article and I have looked at the picture so we do not have to have the article read again. Mr. Brownstein, what is your position?

MR. RODENBERG:

Well, may I just finish with this, your Honor. That it describes a methodology used by bank robbers of suburban banks which is identical with what the Government claims here and, sir, as I say, I think it is even not important whether the jurors read it. The U.S. Attorney knew this case was being tried. He had himself interviewed. I am not going to tell you - -

THE COURT:

You have made that statement before, Mr. Rodenberg.

MR. RODENBERG:

Yes, I did, and the same for the FBI.

THE COURT:

All right. Now, Mr. Brownstein.

(Government Exhibit Number 65

marked for identification.)

-14-

M. T. Hall & E. F. Kishley

OFFICIAL REPORTERS, U. S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

1 THE COURT:

Could you hand it up to me, Mr.

2 White. Go ahead, Mr. Brownstein.

3 MR. BROWNSTEIN:

4 The timing of this article and the  
5 tone of this article and the pictures  
6 in this article makes it as a rational  
7 man, which we both are, absolutely, your  
8 Honor, impossible for anyone, any logical  
9 rational man to, in the event of the  
10 polling of the jury or a harmless error  
11 is discussed to believe that this kind  
12 of a thing can not and will not prejudice  
13 this case. It is, - I haven't been  
14 around as long as Zel has in the trial  
15 of these actions but I have never seen  
16 anything like this. It almost reeks of  
17 premeditation. I can't believe that  
18 somebody would do such a thing as this.  
19 It can't be innocent. To talk of  
20 prejudice is just almost a joke. It  
21 absolutely destroys our case and makes  
22 the possibility of an acquittal a joke  
23 and I am very upset over the thing.  
24 Five weeks time, the case I felt going  
25 in well on our part and now having this  
happen at this juncture makes me too





1 THE COURT:

In that they show a man vaulting  
2 the counter in the photos.

3 MR. CARLISI:

Not only that, your Honor, the use  
4 of plastic gar bags is mentioned in  
5 the article and the witching of cars  
6 a short distance from the bank is  
7 mentioned in the article; the use of  
8 long barreled handguns is mentioned  
9 in the article, all identical to the  
10 proof in this case. The fact that the  
11 banks that are picked for these robberies  
12 are located near expressways, exactly  
13 the proof in this case. The Chase  
14 Manhattan Bank is located near an  
15 expressway and we have testimony on that.  
16 The similarities are rank. Another  
17 problem, your Honor, which hasn't been  
18 brought up, the mention of this article  
19 came over television this morning in a  
20 news broadcast at approximately 8:25.  
21 I don't know which channel, but I was  
22 told that a black female reporter on a  
23 news, a local news program mentioned  
24 this particular incident; that the FBI  
25 has mentioned in this article that in a

-17-



statement that there are suspected, -  
there is a suspected ring of approximately  
eight people involved.

THE COURT:

Certainly we can tell the jury  
that we know definitely that Mr. Barrett  
and Mr. Santana, - we would hate to put  
it that way - -

MR. CARLISI:

I would love to have you put it  
that way, your Honor.

THE COURT:

All right. Mr. Williams.

MR. CARLISI:

Your Honor - -

THE COURT:

Mr. Carlisi.

MR. CARLISI:

Yes, your Honor, I am sorry. One  
last point. I feel like I have spent  
half the time in this trial moving for  
mistrials and I am reluctant to do it  
again but I have to do it obviously.  
The jury has been admonished so many  
times and asked about certain incidents  
that occurred.

THE COURT:

Just one time I think with this  
jury.

MR. RODENBERG:

Yes, that's right.

MR. CARLISI:

Yes, that's right. There were  
more motions but they were asked about

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The trial, although it would seem we have been here for a long time, as far as days of testimony, it really has not been too long.

I think the Court sees my point,  
though, thank you.

All right. Mr. Williams, is Mr. Arcara on the way?

Judge, I talked to Betty and she  
said he just stepped out of the office.

Mr. Williams.

Judge, with respect to this article, the only, - the first that I was aware of it was this morning at about quarter to 9:00 when Mr. Arcara asked me if I



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had seen the Courier Express and I told him, "No" and he showed me the article and he said he was interviewed yesterday, - I don't know whether he said, Terry McElroy or John Pauly of the Courier about bank robbery cases generally over the last many years and he also told me that he learned from John Pauly that Dennis Gibbs was interviewed yesterday at the FBI and as I understand from Mr. Arcana, and perhaps we ought to get Mr. Gibbs over here too, was that Mr. McElroy told Mr. Gibbs there probably wouldn't be any article in the paper for a couple of weeks or so. In any event, Judge, that is what I have been told. I didn't give out any story. I didn't authorize it. This is the first I knew about it was this morning. In any event, we don't know whether or not any of the jurors have read it. We don't know if they are aware of it. We don't know if they ever heard the newscast or television broadcast this morning. I think over and above it the article really cuts both ways.

-20-



12

1 I would submit that, if anything, it  
2 perhaps hurts me more than it helps me  
3 when you look at the - -

4 THE COURT: How do you say that?

5 MR. WILLIAMS: Well, if you look at the same "MO"  
6 there is a group of professionals per-  
7 forming these robberies, the "MO's"  
8 are the same, they use long barrelled  
9 guns, they take down banks adjacent to  
10 expressways, they vault over the counter,  
11 they wear the same kind of garments.  
12 In other words, these defendants are  
13 here, they couldn't have committed the  
14 bank robbery, and they are the same as  
15 these other ones that are unsolved.

16 THE COURT: What can we tell the jury in that  
17 regard?

18 MR. RODENBERG: Well, your Honor, that is outside  
19 the - -

20 THE COURT: Let us start somewhere.

21 MR. RODENBERG: All right, sir.

22 THE COURT: We know Mr. Barrett and Santana  
23 did not do it. Mr. Ferraro is in enough  
24 trouble now. It would certainly be a  
25 great surprise to me if he did it but - -

-21-

13

1 MR. CARLISI:

He is not in custody, your Honor.  
That is the point.

2 MR. RODENBERG:

I am not worried about that.

3 THE COURT:

I want to get zeroed in on the jury.

4 We know Barrett and Santana could not  
5 have been there.

6 MR. RODENBERG:

7 But, your Honor, the article takes  
8 good care of that, "A gang of between  
9 four and eight men". Now, three, - the  
10 jury may say are eliminated. Your Honor,  
11 I cannot believe that they would put in  
12 "between four and eight". I would bet  
13 that they don't know whether there is  
14 one or twenty, that that is in there for  
15 convenience and if you agree with me  
16 which, of course, you don't have to,  
17 that that FBI witness was something less  
18 than forthright Wednesday. This article  
19 cleans him right up, "between four and  
20 eight men". It explains that there are  
21 four men work at a time and that sort  
22 of thing. I just think it is unrealistic,  
23 your Honor, to take any other view. You  
24 know I have never made, - in any other  
25 cases, made any motions for a mistrial.

-22-



1 I just believe that it has become  
2 impossible now to defend here but what  
3 bothers me is that it is an affirmative  
4 act by the U.S. Attorney's Office. I  
5 mean what has been written before has  
6 not troubled me. I mean you cannot  
7 stop the press from doing what it wants.

8 THE COURT:

I have no intention - -

9 MR. RODENBERG:

That's right.

10 THE COURT:

I believe that the press has the  
11 absolute right not only to print the  
12 news but to print the rumors.

13 MR. RODENBERG:

Right, sir.

14 THE COURT:

That would be the last thing I  
15 would do would be to put a gag order  
16 on the press.

17 MR. RODENBERG:

Oh, I quite agree with that but I  
18 think that the discretion, - that  
19 discretion should have been exercised  
20 by the U.S. Attorney's Office, not the  
21 press, of course not. If they can get  
22 information they seek for what they  
23 consider to be newsworthy purposes,  
24 more power to them, but is there not a  
25 duty upon the U.S. Attorney, knowing

there is a trial coming to a conclusion, knowing he is talking about the same type of robbery to refrain, say, "Come back and see me Monday", or whatever.

THE COURT:

It would have been simpler. Mr. White, would you call down, please, and tell Mr. Arcara to hurry up. Here he is.

MR. WILLIAMS:

The only thing I was going to suggest, Judge, is perhaps as the last time when the Court voir dired the jury to find out - -

THE COURT:

We will get into that. One thing at a time. Mr. Arcara, have you seen the article in this morning's Courier?

MR. ARCARA:

Yes, your Honor.

THE COURT:

You were not here for all of the prior discussion. You know we have a bank robbery trial on and we have been on it for some time. We now have motions for a mistrial based on the article. I think you know my attitude toward the First Amendment. I would think that the last thing that this court would do would be to have any gag order on the press. I believe that the Courier, the News has



1 the right not only to print the news,  
2 to print interviews of public officials,  
3 people in private, to put in photographs,  
4 to print rumors. There has been some  
5 argument made here that, - along the  
6 line, we agree, defense counsel says  
7 that the newspaper should print what  
8 they believe is newsworthy but on the  
9 other hand they should be some restraint  
10 exercised by the prosecutor and officers  
11 while a trial is in progress. Since  
12 you have read the article, what do you  
13 want to say about it?

14 MR. ARCARA:

Well, your Honor, I got a call  
from Mr. Pauly two days ago and he  
advised me that he was just doing a  
general article regarding, - something  
funny, Mr. Brownstein?

19 MR. BROWNSTEIN:

No. I know John Pauly. That's  
just what he would say.

21 MR. ARCARA:

I take this whole matter very  
seriously, and he indicated to me that  
he was doing an article regarding  
suburban bank robberies and I said,  
"Well, that's fine", and I said, "What

17

1 do you want me to say, John", and he  
2 says, "Do you give them much priority",  
3 and I said, "Well, we give them top  
4 priority. I think they are very serious  
5 cases and that is the way our office  
6 treats them", and he says, "Well, what  
7 is generally the conviction rate", and  
8 I said, "It is very high", I said, "We  
9 have almost all convictions on them",  
10 and that is all I said to him. I had  
11 no idea of what he was going to write  
12 about and I didn't ask him and that was  
13 generally the full extent of my  
14 conversation with Mr. Pauly and I don't  
15 think I said anything at all which would  
16 affect this trial.

17 THE COURT:

Did anyone from the Bureau, Mr.  
18 Gibbs or anyone else consult with you  
19 about giving an interview at this time?

20 MR. ARCARA:

No, your Honor. I had no conversa-  
21 tion with anyone from the FBI in this  
22 regard at all.

23 THE COURT:

The surveillance pictures here are  
24 evidentially police photographs. They  
25 are not the kind that usually newspaper

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1 photographers, unless they are extremely  
2 alert, would be able to make. As far  
3 as the photos, did you have anything to  
4 do about getting the photos out?

5 MR. ARCARA:

6 No, your Honor. I had no idea.  
7 As a matter of fact, when I read the  
8 article this morning I went to Mr.  
9 Williams' office and I asked him, "Were  
10 any of these photographs pertaining to  
11 the trial upstairs", and he said, "Let  
12 me take a look", and he studied them  
13 for about three minutes and he said,  
14 "No".

15 THE COURT:

16 I am satisfied that the photos are  
17 not the photos from this trial but there  
18 are very close similarities to the garb  
19 worn and the actions, in one case,  
20 vaulting the counter very similar to  
21 some of the photos in this case.

22 MR. ARCARA:

23 Your Honor, I don't know how you  
24 can, you know, how my office - -

25 THE COURT:

Restraint, Mr. Arcara, is a  
marvelous, marvelous characteristic.  
It is simple to say, "Mr. Pauly, there  
is a serious bank robbery trial going

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on now. If you want an interview, why don't you wait a week and I will be glad to talk to you at length about our problems as a prosecutor and call to your attention a number of things".

MR. ARCARA:

Your Honor - -

THE COURT:

Put yourself in defense counsel's shoes. I do not look upon Mr. Rodenberg and Mr. Brownstein and Mr. Carlisi as suspicious men but I think, - don't you think that if you saw this spread, these photos, they would say, "That it certainly looks like by putting these photos in and by talking about conviction rate, talking about the gang, the pro gang, four to eight men operating in suburban banks", this is a suburban bank, would not that make you suspicious that something was about?

MR. ARCARA:

Well, that was initially my reaction too, to be honest with you, Judge. I talked to Mr. Williams and he said, "I think it is just the opposite". He said, "I think it affects our case, the Government's case adversely and helps



the defendants in this case", so I think there are two views on this and I took your view when I first read it but Mr. Williams has a different view.

THE COURT:

Call Mr. Gibbs, please, and tell him to come over, that I would like to find out more about this.

MR. ARCARA:

Fine, your Honor.

MR. WILLIAMS:

Excuse me, Judge. Mr. Lewis has a radio. I think he can get him on the radio.

THE COURT:

Let us do this; in the meantime have the jury come up, please, Mr. White, and we can make inquiry of the jury. If anyone has the articles around, would you put them away, please.

MR. BROWNSTEIN:

Your Honor, could I just say one more thing that occurred to me with relation to this?

THE COURT:

Surely.

MR. BROWNSTEIN:

Mr. Rodenberg reminded me of a second thing, but it is quite conceivable that a jury, after hearing the testimony of Officer McGuigan relating to certainly missing money and at least a fourth



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suspect, no matter whether he considered  
him a prime suspect or whatever, might  
well feel after reading this article,  
"Four to eight, huh, we got three here,  
we got three of them here and we are  
going to take care of these guys now".  
That's the way I would feel if I were  
a juror and read that article, and the  
second thing, and you may or may not  
discount this, I have had a number of  
articles written in cases I was on by  
John Pauly of the most damaging and  
prejudicial kind. Now, I am not saying  
that he wrote this article because he  
had Brownstein on it, not at all.

16 THE COURT:

17 Pauly is a reporter and I know Mr.  
18 Pauly and he has the right to fare it  
19 out. There is nothing here. He quoted  
20 Mr. Arcara correctly. The photographs  
21 were evidentially photographs taken. I  
22 am sure he quoted Mr. Gibbs correctly.  
23 I am not here to defend, neither to  
24 praise or to do anything but I am not  
25 going to make Pauly an issue here. He  
has a right - -



8 MR. ROSENBERG:

There is something else which has

9 occurred. Marshal Anderson, - there  
10 are no jurors here, - brought in two  
11 newspapers that he said, - he left  
12 them here. They were in the jury room.

13 THE COURT:

I did know that there were some  
14 papers down there. Just put those to  
15 one side, will you, Mr. Brownstein.

16 MR. BROWNSTEIN:

Yes, I will.

17 THE COURT:

I will ask the jurors. I intended  
18 to ask the jurors about that, that  
19 there were newspapers in the jury room  
20 and to ask them if any of the jurors  
21 had seen any of the papers in the jury  
22 room. Mr. Gibbs, Mr. Arcara.

23 MR. ARCARA:

Yes, your Honor.

24 THE COURT:

Could you step up, please. Mr.  
25 Gibbs, as you no doubt are aware, there

H. T. Noel & E. F. Knisley  
OFFICIAL REPORTERS, U. S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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1 was an article in this morning's Courier  
2 that had to do with extensive writeup  
3 on the bank robbery problem which is  
4 certainly of newsworthy interest, not  
5 only to the newspapers but to the reading  
6 public. The unfortunate thing is it  
7 came up right during the middle of the  
8 trial here that is going on. I believe  
9 firmly in the public's right to know and  
10 believe that the newspapers have the  
11 right to print the news. As a matter  
12 of fact, to print rumors, print photo-  
13 graphs and all the rest of it but I  
14 think that certainly interviews like  
15 this must be timed. Some restraint must  
16 be given. I know that you do not want  
17 to hide things which should not be  
18 hidden and you want to call to the  
19 public's attention, problems law enforce-  
20 ment has which are considerable, no  
21 doubt, but it should be done with  
22 restraint and furthermore, when you talk  
23 to reporters you have to presume that  
24 the reporter is going to write it  
25 because that is his job and it is never

-32-



1 for any public official to say, "Well,  
2 I didn't know that he was going to  
3 write it or print it". You have got  
4 to presume, even if the reporter says,  
5 "Well, I just want some general informa-  
6 tion", if you tell him something, you  
7 have to presume that he is going to  
8 write it and he is going to write it  
9 as soon as he believes it is worthwhile  
10 to write it. All right. I think the  
11 most important thing is to go ahead.  
12 I think it might be worthwhile if you  
13 and Mr. Arcara maybe could meet with  
14 me, give me your problems and suggestions  
15 about this kind of thing privately in  
16 a day or so, but I think it most important  
17 now to continue with the trial.

18 MR. ARCARA:

Your Honor, I think it might be  
19 appropriate if Mr. Gibbs can at least  
20 put on the record, since this has been  
21 brought up on the record, his view on  
22 this interview.

23 THE COURT:

Very well.

24 MR. GIBBS:

I did not know when the article  
25 was appearing at the time I granted the

1 interview because our office was  
2 approached and the paper was concerned  
3 about the great number of suburban  
4 bank robberies. The reporter was told  
5 by me about this trial and I said, "You  
6 realize there is a trial going on now",  
7 and he said, and I read the article  
8 this morning and he said there would  
9 be no mention of this trial.

10 THE COURT:

He did not mention the trial.

11 MR. GIBBS:

And there are no photographs or  
12 anything else.

13 THE COURT:

The trouble is that at least two  
14 of the photographs, - we know they are  
15 not of this trial but they are very,  
16 very similar to the photographs that  
17 are in evidence in this trial.

18 MR. GIBBS:

All those photographs, your Honor,  
19 have been in the paper in the past, all  
20 of them.

21 MR. ARCARA:

What I am suggesting, your Honor,  
22 I don't think the Bureau or my office  
23 went out and sought publicity in any  
24 way at all to impede this trial.

25 THE COURT:

That is all right, but when the



1 reporter comes you have to presume it  
2 is his job to publish. It is like  
3 giving a good drink to an alcoholic.  
4 He is going to write it, or like giving  
5 a tip to a horse player. Very well.  
6 Thank you very much. Is the jury  
7 coming, Mr. White? Call the jury. Mr.  
8 Arcara.

9 MR. ARCARA: Yes, sir.

10 THE COURT: Could you talk a little bit on  
11 this problem?

12 MR. ARCARA: Yes, sir.

13 THE COURT: I hate to have hard and fast rules  
14 in this area because it is so difficult  
15 to do it.

16 MR. ARCARA: Your Honor, it has been my policy  
17 since I have been the United States  
18 Attorney to exercise total restraint  
19 in this area.

20 THE COURT: Pauly is an aggressive reporter  
21 and I am sure he came to you and you  
22 did not call him.

23 MR. ARCARA: I will be more cautious then ever,  
24 your Honor.

25 THE COURT: When we resume, - I presume we will

21

THE COURT:

Mr. Rodenberg, Mr. Carlini --

22

MR. RODENBERG:

Yes, your Honor.

23

THE COURT:

The note I have reads as follows,

24

"Your Honor, a verdict has been reached

25

on one defendant and the tally sheet

H. T. Neal & E. F. Kniskay  
OFFICIAL REPORTERS, U. S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK



1 marked. The jurors now wish to change  
2 their votes after further discussion.  
3 Can this be done? An impasse has been  
4 reached on the other two because one  
5 juror is unwilling to convict on circum-  
6 stantial evidence. The reason the other  
7 jurors wish to change their minds is  
8 because they feel one is no more guilty  
9 or innocent than the other two."

10 I have heard an hour's argument  
11 from learned lawyers on the meaning of  
12 a contract about providing nuclear fuel  
13 and I think that the jurors could have  
14 drawn the contract because every line  
15 in the contract would say "You do this",  
16 and then it would say "On the other  
17 hand, you may not have to do that", but  
18 what it comes to, I think as far as the  
19 first question is concerned, "Can the  
20 jurors change their mind", they have not  
21 announced their verdict in open court.  
22 After further deliberation certainly if  
23 a juror believes conscientiously that  
24 he should change his mind, he is entitled  
25 to before the vote is recorded in open



1 court.

2 As far as the second part, "An  
3 impasse has been reached on the other  
4 two because one juror is unwilling to  
5 convict on circumstantial evidence", as  
6 far as that is concerned, I believe that  
7 I should say to the jurors again that  
8 they should, are entitled to use circum-  
9 stantial evidence just as they consider  
10 direct evidence; that certainly if it is,  
11 as I have told them before, if it is  
12 reasonable, if it is based upon facts  
13 which they have found to have been proven  
14 to their satisfaction beyond a reasonable  
15 doubt and the inferences point reasonably  
16 to a certain conclusion, they are entitled  
17 to consider that circumstantial evidence.  
18 If, as we have said before, it points  
19 reasonably to two conclusions, one of  
20 innocence and one of guilt and the  
21 inferences are equal, then, keeping in  
22 mind the rule of proof beyond a reasonable  
23 doubt, they must accept the inference  
24 pointing to innocence. The jury is here.  
25 No, they are not here yet. The defendants



are here.

(Defendants Michael Patrick Barrett  
and Ferdinand Santana present.)

THE COURT: Any suggestions before the jury  
comes in?

MR. CARLISI: I fully agree in the Court's comments  
on the first point, your Honor, but as  
to the second one I am somewhat reluctant  
to agree with that simply because that  
particular juror who is undecided may be  
undecided because he is not convinced  
beyond a reasonable doubt. Now, if he  
is undecided for that reason, the Court's  
instruction might sway him to agree with  
the other eleven jurors. That is the  
danger of that type of comment.

MR. RODENBERG: He could consider it an admonition  
from the Court, sir, she or whichever it  
is, and I would point out, of course,  
your Honor has the authority perhaps to  
do what you have suggested, but they  
haven't asked anything in this regard.  
Really all they are asking is whether they

-39-



1 can renege on that other matter as I see  
2 it anyway and really, your Honor, I am  
3 concerned as is each counsel, I am sure,  
4 that that might just be enough to tilt  
5 it when this man or woman would not  
6 otherwise convict. It is a sticky  
7 situation because they have explained to  
8 you the trouble about the circumstantial  
9 evidence which they don't normally do.

10 THE COURT:

Mr. Brownstein, anything?

11 MR. BROWNSTEIN:

Same comment, same feeling, same  
12 comment, same fears.

13 THE COURT:

Have the jury come up, Mr. White.  
14 Yes, Mr. Williams.

15 MR. WILLIAMS:

I was just going to say, your Honor,  
16 my view of this is certainly this is not  
17 going to the extent of a so-called  
18 Allen charge. I don't think we have  
19 reached that point yet and it seems to  
20 me from the note as I understand it, one  
21 juror is saying he won't convict based  
22 upon circumstantial evidence. Maybe  
23 there is something he misunderstands  
24 about circumstantial evidence and it  
25 seems to me that under those circumstances



1 the Court's indicated instruction to the  
2 jury, I see nothing wrong with it. I  
3 think it is proper and I think it may  
4 aid the jury in resolving this case one  
5 way or the other and we have been here  
6 for a long time and I think if this jury  
7 can resolve the issue, that they ought  
8 to do that.

9 MR. BROWNSTEIN:

I also feel, adding what I didn't  
say before, that he might also be telling  
us he has a reasonable doubt and I don't  
want to subvert that obviously in any  
way by any charge your Honor might make.

14 MR. ROSENBERG:

Your Honor, at this point I think  
I would, - what would you call it, a  
mistrial, - a hung jury, whatever. There  
has been a disclosure of what has been  
going on in the grand jury which, of  
course, is a highly unusual disclosure.  
The fact circumstances such now, sir,  
where we know that eleven are going one  
way and it is really a matter of not  
convincing but forcing that twelfth one  
and I think if your Honor does say  
anything about obligation, it is that

-41-



1 that could tilt that individual unwill-  
2 ingly and we should not, you know, we  
3 should have a better shot than that. I  
4 don't know of any other instance.

5 Perhaps your Honor does, where they have  
6 given the reason why they can't get along.  
7 I think that automatically calls for a  
8 mistrial.

9 MR. WILLIAMS: Well, I don't think --

10 MR. RODENBERG: Maybe not, I don't know, Judge. I  
11 have never had that.

12 MR. WILLIAMS: As I understand, they didn't say  
13 how they stood, whether for guilt or  
14 innocence.

15 MR. RODENBERG: They said one. It is quite obvious  
16 how they are standing because it talks  
17 about the refusal to accept a certain  
18 type of evidence by way of testimony, so  
19 it is quite obvious how they stand, sir,  
20 and I think in a situation such as this,  
21 whoever it is should not be tilted over  
22 by compulsion.

23 THE COURT: There will be no compulsion.

24 MR. RODENBERG: Oh, I know that, but in the mind of  
25 the individual. I know there will be no



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compulsion from the Court, but the individual is liable to take it that way.  
He will not feel compelled. Mr. Brownstein, Mr. Carlisi.

MR. CARLISI: One further comment, your Honor. I think that as Mr. Redenberg has just pointed out, if the Court goes into the law again on circumstantial evidence, it may give some feeling to that twelfth juror that he must agree with the other eleven. I think perhaps they have already heard the law ad nauseam on circumstantial evidence and I believe they understand it and to comment on it further I think might cause a problem.

THE COURT: I have your views. Thank you.

(Jury returns to the courtroom.)

THE COURT: All jurors are assembled. Defendants are here with counsel.

Ladies and gentlemen, I have a note which reads, as you know, "Your Honor, a verdict has been reached on one defendant and the tally sheet marked."



1 The jurors now wish to change their votes  
2 after further discussion. Can this be  
3 done? An impasse has been reached on  
4 the other two because one juror is  
5 unwilling to convict on circumstantial  
6 evidence. The reason the other jurors  
7 wish to change their minds is because  
8 they feel one is no more guilty or  
9 innocent than the other two."

10 In the beginning to attempt to  
11 answer your question I should again  
12 repeat to you that no man or woman should  
13 be convicted in a court unless the jury  
14 is convinced of guilt beyond a reasonable  
15 doubt.

16 You should also address the problem  
17 by considering each defendant separately  
18 in any case, by considering each count  
19 separately.

20 In turning to the first question as  
21 to whether you may now change your vote  
22 after you have marked the tally sheet,  
23 the answer to that question is "Yes, you  
24 may" because you have not announced your  
25 verdict in open court and certainly



1 deliberation is a continuing process and  
2 although, as all of us in our daily life  
3 make tentative plans in important things,  
4 whether we are going to take an extended  
5 trip, whether we shall have a serious  
6 operation, whether we should go to the  
7 dentist, all these are important problems  
8 to be met in our daily life; we make  
9 tentative plans but until we make a final  
10 decision as reasonable, conscientious  
11 human beings, we are entitled to change  
12 our mind, and in a court case it might  
13 be that tentative discussions go on in  
14 the jury room and tentative decisions are  
15 reached, but then on further discussion,  
16 further facts come to the minds of a  
17 juror or jurors and the juror decides  
18 "Well, I was wrong in the beginning and  
19 now conscientiously for a good reason I  
20 change my mind" so that until you announce  
21 your vote in open court, any juror is  
22 entitled to change his mind. The answer  
23 to the first question simply then is  
24 "Yes".

25 The second part of this, it is not

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1 a question but, on the other hand, I  
2 suppose it would not be written down here  
3 unless there was a question in your mind,  
4 so I will take it as a question. That  
5 is, "An impasse has been reached on the  
6 other two because one juror is unwilling  
7 to convict on circumstantial evidence".  
8 Again we start with the proposition that  
9 you cannot convict, you cannot vote to  
10 convict unless you are convinced of guilt  
11 beyond a reasonable doubt from the evidence  
12 in the case. That means all the evidence  
13 in the case, what the witnesses said,  
14 what the witnesses show and the inter-  
15 relationship between one and the other.

16 You know when we use circumstantial  
17 evidence, and as I have explained to you  
18 before it is proper for a juror to use  
19 and consider circumstantial evidence.  
20 We consider it all the time in matters  
21 of importance to ourselves. Today with  
22 the first time you came to this court-  
23 house you saw the elevators; you did not  
24 know if you had never been in the building  
25 before that the elevators went to the



1 various floors in the building but  
2 because of your past experience in life,  
3 you assumed that they would go to the  
4 various floors in the building so you  
5 got on the elevator. That is a use of  
6 circumstantial evidence because no one  
7 told you that the elevator would go to  
8 the second, third, fourth, fifth and  
9 sixth floor and so forth.

10 You were out on a country road in  
11 the wintertime, there is freshly fallen  
12 snow. You see automobile tracks in the  
13 snow. It would be, again, you would know  
14 a car passed that way. You did not see  
15 the car. You are using circumstantial  
16 evidence. You could not help but use  
17 circumstantial evidence.

18 On the other hand, if you saw foot-  
19 prints in the snow, you would not be able  
20 to tell how tall or how short the  
21 individual was and therefore you must be  
22 careful how you use circumstantial  
23 evidence. If you saw footprints going  
24 from one house to another, you would say  
25 that an individual walked from house "A"

-47-



1 to house "B". You could not escape the  
2 consequences of what you saw there before  
3 you so that it is certainly proper to  
4 use, for any juror to use circumstantial  
5 evidence.

6 Keeping in mind what I have explained  
7 to you before that you must be, - the  
8 underlying facts, of course, you must be  
9 convinced of the proof of the underlying  
10 facts beyond a reasonable doubt. Further-  
11 more, the inferences that you take must  
12 be reasonable, must be carefully arrived  
13 at.

14 Certainly, as I have told you before,  
15 if there are two reasonable inferences  
16 that may be reached, both equal, one  
17 pointing to innocence and the other  
18 pointing to guilt, then, of course, you  
19 should adopt the inference that points  
20 to innocence rather than to guilt.

21 The rest of your comment here,  
22 "The reason the other jurors wish to  
23 change their minds is because they feel  
24 one is no more guilty or innocent than  
25 the other two". Frankly I do not get



1 the full import of that standing by  
2 itself except it seems to me that you  
3 should go back to the jury room and  
4 continue to deliberate.

5 Again, it is important that you  
6 listen to the conscientious views of  
7 your fellow jurors and give them your  
8 own well considered suggestions. You  
9 should not in any case consider material  
10 outside of the courtroom, but you should  
11 consider what you had heard here. Mrs.  
12 Coe, I do not want you to tell me how  
13 you stand or anything, but as far as  
14 going back, do you think any further  
15 instruction is needed from the Court for  
16 you to continue your deliberation?

17 THE FOREMAN OF THE JURY: At this time, no.

18 THE COURT: "No", all right. If you do want  
19 any further instruction, why don't you  
20 write the question and give it to the  
21 Marshal and then we would have you back  
22 up again. Very well. Why don't you go  
23 back to the jury room and continue with  
24 your deliberation. I will ask Mr.  
25 Williams and the other lawyers to stand

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BEST COPY AVAILABLE

1 the danger.

2 THE COURT:

I think I told them that several  
3 times.

4 MR. RODENBERG:

Your Honor, on behalf of the  
5 defendant Santana, I would ask your  
6 Honor to consider the remarks I made  
7 earlier as a motion to discharge the jury  
8 because it is obvious now that any  
9 agreement the jurors might come to could  
10 because of the language of the note  
11 presented to your Honor, - that is,  
12 taking that as a basis, be regarded as  
13 nothing more than, as a form of compulsion.  
14 I agree that your Honor was most fair in  
15 his remarks. However, I do think, sir,  
16 it is quite obvious they are standing  
17 eleven to one, shall I say, on the side  
18 of the prosecution and in such a situation  
19 where this is made known and where the  
20 jurors only ask if they could reconsider  
21 as to the man who has, - whose innocence  
22 or guilt has already been determined,  
23 that there should now be, - that the jury  
24 should now be dismissed.

25 THE COURT:

Mr. Carlisle, do you have anything to

-51-



say?

1  
2 MR. CARLSON:

I would join in that motion.

3 MR. BROWNSTEIN:

I would join also.

4 THE COURT:

I will deny the motions. The

5

defendants may be returned, Mr. King,

6

and I will ask the attorneys to remain

7

in the area, please.

MICHAEL PATRICK BARRETT

DEC 1976

WESTERN DISTRICT OF NEW YORK

-133

DOCKET NO.

CR-76-95

## JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH DAY YEAR  
December 16 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Richard Brownstein

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged.☒ GUILTY.FINDING &  
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **Bank Theft, in violation of Title 18, U.S.C., Section 2113(b) (Ct. 2)**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

**Ten (10) Years. This sentence to run concurrently with the sentence imposed in Cr-76-102.**

SENTENCE  
OR  
PROBATION  
ORDERSPECIAL  
CONDITIONS  
OF  
PROBATIONADDITIONAL  
CONDITIONS  
OF  
PROBATION

COMMITMENT

JAN 25 8 50 AM '77

U.S. DISTRICT COURT  
W.D. OF N.Y.

BEST COPY AVAILABLE

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and



COUNSEL

☐ WITHOUT COUNSEL

☒ WITH COUNSEL

PLEA

☐ GUILTY, and the court being satisfied that ☐ IN NO CONTENDERS, ☐ NOT GUILTY  
there is a factual basis for the plea,

There being offering/verdict of

☐ NOT GUILTY, defendant is discharged  
☒ GUILTY.

FINDING &  
JUDGMENT

Defendant has been convicted as charged of the offense(s) of ☐ Infr. There, in violation of  
Title 18, U.S.C., Section 2382(a) (Ct. 1)

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Ten (10) Years. This sentence to run concurrently with the sentence imposed in Cr-78-102.

SPECIAL  
CONDITIONS  
OF  
PROBATION

JAN 25 8 53 AM '77  
U.S. DISTRICT COURT  
N.D. OF N.Y.

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may examine the defendant at any time, and, in case of failure to appear at a court date, or during the probation period, or of other cause, may suspend the probation for a period of five years, or may issue a warrant and revoke probation for a violation occurring during the probation period.

DEFENDENT  
COMMITMENT  
DATE

The court orders commitment to the custody of the Attorney General and his authorized representative.

It is ordered that the Clerk of the Court shall cause a copy of this judgment to be filed with the United States Marshal for the District of New York, and that the United States Marshal shall cause a copy of this judgment to be filed with the United States Marshal for the District of New York.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs

MICHAEL PATRICK BARRETT,  
JOSEPH CHARLES FERRARO and  
FERDINAND SANTANA

MARCH 1976 SESSION  
(Impaneled 6/8/76)  
No. CR 76-95  
Vio. T. 18, U.S.C.,  
§§ 2113 (a), (b) and  
(d)

COUNT I

The Grand Jury Charges:

On or about the 16th day of June, 1976, in the Western District of New York, the defendants, MICHAEL PATRICK BARRETT, JOSEPH CHARLES FERRARO and FERDINAND SANTANA, did willfully, knowingly and unlawfully take from the person and presence of Natalie Rossini, and others, approximately \$9,900 in money, belonging to, and in the care, custody, control management and possession of the Chase Manhattan Bank, 2225 Colvin Boulevard, Town of Tonawanda, New York, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation; all in violation of Title 18, United States Code, Section 2113(a).

COUNT II

The Grand Jury further charges:

On or about the 16th day of June, 1976, in the Western District of New York, the defendants, MICHAEL PATRICK BARRETT, JOSEPH CHARLES FERRARO and FERDINAND SANTANA, did willfully, knowingly and unlawfully take and carry away, with intent to steal and purloin, from the Chase Manhattan Bank, 2225 Colvin Boulevard, Town of Tona-



da, New York, the sum of approximately \$9,900 in money, belonging to, and in the care, custody, control, management and possession of the Chase Manhattan Bank, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation; all in violation of Title 18, United States Code, Section 2113(b),

COUNT III

The Grand Jury further charges:

On or about the 16th day of June, 1976, in the Western District of New York, the defendants, MICHAEL PATRICK BARRETT, JOSEPH CHARLES FERRARO and FERDINAND SANTANA, did willfully, knowingly and unlawfully take from the person and presence of Natalie Rossini, and others, approximately \$9,900 in money belonging to, and in the care, custody, control, management and possession of the Chase Manhattan Bank, 2225 Colvin Boulevard, Town of Tonawanda, New York, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation and the defendants, MICHAEL PATRICK BARRETT, JOSEPH CHARLES FERRARO and FERDINAND SANTANA, in committing the aforesaid offense, did assault Natalie Rossini, and others, and put in jeopardy the life of Natalie Rossini, and others, with the use of weapons, to wit, handguns; all in violation of Title 18, United States Code, Section 2213(d).

(P) Richard J. Arcara  
RICHARD J. ARCARA  
United States Attorney

A TRUE BILL:

s/ Ralph F. Dean  
Foreman

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA

Appellee

vs

Affidavit

MICHAEL PATRICK BARRETT,  
FERDINAND SANTANA

No. 77-1018

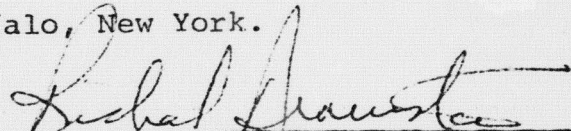
Defendants-Appellants

STATE OF NEW YORK)  
COUNTY OF ERIE     )  
CITY OF BUFFALO    )

SS:

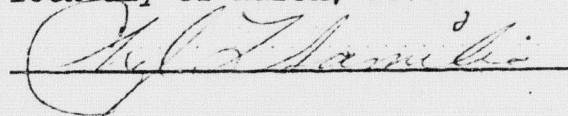
RICHARD BROWNSTEIN, being duly sworn, deposes and says:

That on the 18th day of March, 1977, he personally served three copies of Brief for Defendant-Appellant Barrett and Appendix for Defendant-Appellant Barrett on the United States Attorney, United States Courthouse, Buffalo, New York.

  
Richard Brownstein

Sworn to before me this

16th day of March, 1977.



CHERYL L. BANNING  
Notary Public, State of New York  
My Comm. Ex. 100000  
My Comm. Exp. March 30, 1977